

Sales of tangible personal property to a lessor who leases that property to a governmental body are not subject to Retailers' Occupation Tax. See 86 Ill. Adm. Code 130.2012. (This is a GIL).

August 6, 2004

Dear Xxxxx:

This letter is in response to your letter dated March 18, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am writing to request a personal information letter to address the following tax issue concerning true, fair-market-value residual leases:

We are a copier and fax machine commercial dealer. We do a significant amount of business with public schools, units of local government, and not-for-profit organizations. We also allow our customers to lease the equipment that we market by way of a third party leasing company. We sell our equipment to the leasing company and include Illinois sales tax on the transaction. We report and remit that tax on our ST-1. The leasing company in turn collects a stream of lease payments over the life of the lease, which is at last 3 years. Please note that the leasing company *does not* add sales/use tax to the stream of payments received from any customer, no matter what type of entity they are.

Our leasing company has now told us that we do not have to charge sales tax on the sale to them when the end user (lessee) is a *municipality*. We have resisted doing so because we do not want to find out later that, as the seller of the equipment in an up-front tax state, that we are responsible for considerable mounts of money should they be in error. However, there would be the obvious 7.25% price advantage if we do not have to figure sales tax into the sale, so I am requesting that you consider this special situation and provide us with your determination.

I would also appreciate your determination of the same set of conditions when the end-user (lessee) is a public school or school district, or a not-for-profit organization with a valid 'E' number. Please feel free to contact me if you require more information.

Thank you for your attention to this request.

DEPARTMENT'S RESPONSE

For general information purposes, pursuant to 86 Ill. Adm. Code 130.2012, sales of tangible personal property to a lessor who leases that property to a governmental body are not subject to Retailers' Occupation Tax. The exemption is available, provided that:

- 1) the tangible personal property must be purchased for lease to a governmental body under a lease that has been executed or is in effect at the time of purchase;
- 2) the lease must be for a period of one year or longer; and
- 3) the lease must be to a governmental body that has an active tax exemption identification number issued by the Department under the Retailers' Occupation Tax Act (see 86 Ill. Adm. Code 130.2007).

In order to properly claim this exemption the purchaser must give the seller a certification stating that the property is being purchased for lease to a governmental body, under a lease of one year or longer executed or in effect at the time of the purchase and containing all of the following information:

- a) The seller's name and address;
- b) The purchaser's name and address;
- c) A description of the tangible personal property being purchased;
- d) The purchaser's signature and date of signing;
- e) The name of the governmental body and its tax exemption identification number issued by the Department; and
- f) The date the lease was executed and the lease period.

Persons who, under bona fide agreements, rent or lease the use of automobiles under lease terms of more than one year, furniture, bus tires, costumes, towels, linens or other tangible personal property to others are, to this extent, not engaged in the business of selling tangible personal property to purchasers for use or consumption within the meaning of the Retailers' Occupation Tax Act and are not required to remit Retailers' Occupation Tax measured by their gross receipts from such transactions. However, such lessors (not being resellers) are deemed the end users of such property and are subject to the Use Tax when purchasing tangible personal property which they rent or lease to others. See Sections 150.201 and 150.305(e) of the Use Tax (86 Ill. Adm. Code 150) and 86 Ill. Adm. Code 130.220 of the Retailers' Occupation Tax Act.

Except as provided in 86 Ill. Adm. Code 130.2011 and 130.2012 (exempt hospitals and governmental bodies), such lessors incur Use Tax even if the tangible personal property is leased to an exempt entity that has been issued an exemption identification number under 86 Ill. Adm. Code 130.2007. This would include all entities, other than exempt hospitals and exempt governmental bodies, even if they have a valid "E" number exemption identification. Under the Act, the lessor, as end user, would incur Use Tax liability when renting or leasing equipment to not-for-profit organizations, even if they presented a valid exemption identification number. See 86 Ill. Code 130.2010(b).

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Edwin E. Boggess
Associate Counsel

EEB:msk